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SENATE BILL 2676 By
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HOUSE BILL 3081
By Hargrove

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, to define the theft of services by the unauthorized use of wireless telecommunications services and to provide for civil and criminal penalties for acts relating to such unauthorized use.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 1. Tennessee Code Annotated, Title 39, Chapter 14, is amended by adding the following new section:

Section _____. (a) It is an offense for any person knowingly to:

(1) Make, distribute, possess, use or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is used:

(A) For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunication service provider in violation of this section; or

(B) To conceal, or assist another to conceal, from any telecommunication service provider or from any lawful authority the existence or place of origin or of destination of any telecommunication; or

(2) Sell, possess, distribute, give, transport, or otherwise transfer to another or offer or advertise for sale any:

(A) Unlawful telecommunication device, or plans or instructions for making or assembling the same under circumstances evincing an intent to use or employ the unlawful telecommunication device, or to allow the same to be used or employed, for a purpose described in subsection (a)(1)(A) or (a)(1)(B) above, or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling the unlawful telecommunication device; or

(B) Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication device; or

(3) Publish plans or instructions for making or assembling or using any unlawful telecommunication device, or

(4) Publish the number or code of an existing, canceled, revoked or nonexistent telephone number, credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices with knowledge or reason to believe that it may be used to avoid the payment of any lawful telephone or telegraph toll charge under circumstances evincing an intent to have the telephone number, credit number, credit device or method of numbering or coding so used.

(b) Any unlawful telecommunication device, plans, instructions, or publications described in this section may be seized under warrant or incident to a lawful arrest for a violation of this section. Upon the conviction of a person for a violation of this section, the court may order the sheriff of the county in which the person was convicted to

destroy as contraband or to otherwise lawfully dispose of the unlawful telecommunication device, plans, instructions, or publication.

(c) The following definitions apply in this section:

(1) "Manufacture of an unlawful telecommunication device" means the production or assembly of an unlawful telecommunication device or the modification, alteration, programming or reprogramming of a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider.

(2) "Publish" means the communication or dissemination of information to any one (1) or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.

(3) "Telecommunication device" means any type of instrument, device, machine or equipment that is capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component that is capable of facilitating the transmission or reception of telephonic, electronic or radio communications.

(4) "Telecommunication service" means any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature of telephone, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

(5) "Telecommunication service provider" means a person or entity providing telecommunication service, including a cellular, paging or other wireless communications

company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service.

(6) "Unlawful telecommunication device" means any telecommunication device that is capable, or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number or any telecommunication service without the consent of the telecommunication service provider. The term includes telecommunications devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. This section shall not apply to any device operated by a law enforcement agency in the normal course of its activities.

(d) Any person violating any of the provisions of this section shall be guilty of theft of services pursuant to Tennessee Code Annotated, Section 39-14-104. Provided however, if the offense involves five (5) or more unlawful telecommunication devices the person shall be guilty of a Class B felony.

(e) The court may, in addition to any other sentence authorized by law, order a person convicted of violating this section to make restitution for the offense.

(f) Any person or entity aggrieved by a violation of this section may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of suit and any attorney fees as may be provided by law.

SECTION 2. This act shall take effect on July 1, 1996, the public welfare requiring it.

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